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EXAMINER

JARRETT, SCOTT L

ART UNIT	PAPER NUMBER
3623	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,703

Applicant(s)

TRIGOS ET AL.

Examiner

Scott L. Jarrett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This non-final office action is in response to Applicants application filed January 22, 2002. Currently claims 1-14 are pending.

Drawings

2. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Title

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Method for Evaluating the Level of Knowledge of Personnel Through the Use of Questions.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 1 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claim 1, Claim 1 recites the limitation "connecting to **the** corporate Intranet or Internet". There is insufficient antecedent basis for this limitation in the claim.

Examiner interpreted the claim to read "connecting to a corporate Intranet or Internet" for the purposes of examination.

Further Claim 1 recites the limitation "new questions are entered with **the** required schedule". There is insufficient antecedent basis for this limitation in the claim.

Examiner interpreted the claim to read "new questions are entered with a required schedule" for the purposes of examination.

Further Claim 1 recites the limitation "and **the** administrator identifies a connected user". There is insufficient antecedent basis for this limitation in the claim.

Examiner interpreted the claim to read "and **an** administrator identifies a connected user" for the purposes of examination.

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Regarding Claim 8, Claim 8 recites the limitation "**the** user replies". There is insufficient antecedent basis for this limitation in the claim.

Examiner interpreted the claim to read "**a** user replies" for the purposes of examination.

Claim 8 further recites the limitation "against **the** one stored". There is insufficient antecedent basis for this limitation in the claim.

Examiner interpreted the claim to read "against **one** stored" for the purposes of examination.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 1-2 and 5-14 are rejected under 35 U.S.C. 101 because directed towards non-statutory subject matter.

For a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result.

In the present case, claims 1-2 and 5-7 are directed to a method for generating an evaluation communication wherein the method merely executes "USER software" which connects to a network and sends/updates data and therefore does not produce a useful, concrete, and tangible. A useful, concrete and tangible result for example might include such things as performing a survey, collecting/aggregating, analyzing and displaying the survey response and/or utilizing the analyzed survey results to identify required training courses based on the assessed personnel knowledge level(s).

Claims 8-14 are directed to a method for establishing an evaluation communication with a user wherein the method merely establishes a remote communication between an "ADMINISTRATOR program" (server) and a "CLIENT program" in order to send/receive a message containing a question to which a user responds which is subsequently saved (registered) by the system and therefore does not produce a useful, concrete, and tangible. A useful, concrete and tangible result for example might include such things as performing a survey, collecting/aggregating,

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analyzing and displaying the survey responses and/or utilizing the analyzed survey results to identify required training courses based on the assessed personnel knowledge level(s).

Claim Objections

8. Claims 5-13 and 12-13 are objected to because of the following informalities: the claims improperly refer to the following trademark products/systems/methods Windows platform, Dephi 6.0 and MS-SQL data server 7.0 instead of the generic terminology. Appropriate correction is required.

The use of the trademark Dephi, MS-SQL (Microsoft SQL) and Windows has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claims 7 and 14 are objected to because of the following informalities: the claims refer storing the "name and last name" of the user instead of the intended "first and last name". Appropriate correction is required.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 8 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Mishkin, Paul B., U.S. Patent No. 6,377,781.

Regarding Claim 8 Mishkin teaches a method and system for establishing an evaluating communication with a user consisting of:

- connecting a central system administrator (entity, program, component, terminal, server, ADMINSTRATOR program, etc.; Figure 1, Element 101) to a (corporate) network (LAN, WAN, Intranet, Internet, etc.; Column 4, Lines 1-59; Figure 1, Element 110; Figures 1-2);
- establishing a remote connection between the server and a client (program, terminal, workstation, etc.; Figures 1-2);
- sending a message (text, request, quiz, exam, etc.), having a question on a specific topic, to the client (user terminal, student, etc.; Column 7, Lines 7-22; Figure 5);
- a user replies (answer, response, etc.) to the message/question (Column 3, Lines 3-14; Column 7, Lines 7-22; Figure 5);

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- comparing (controls) the user's reply against one (answer, response, metric, measure, etc.) stored in the system and registers (saves, stores, etc.) the total quantity correct and incorrect in the database (Column 5, Lines 46-68; Column 7, Lines 7-28; Figures 5-6).

Regarding Claim 10 Mishkin teaches a method for generating/establishing a evaluating communication wherein an evaluation communication can be carried out for a specific user, for a group of users *or* for a list of users (staff, personnel, workers, resources, etc.) and further comprising issuing (displaying, providing, etc.) a (detailed) statistical report based on the user's responses (Column 5, Lines 46-68; Column 7, Lines 29-51; Figures 2, 6).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-3 and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parrish et al., U.S. Patent Publication No. 5,416,694.

Regarding Claim 1 Parrish et al. teach a method and system for generating an evaluation communication with a user (i.e. evaluating users, employees, staff, workers, human resources, etc.) comprising (Column 1, Lines 30-46; Column 5, Lines 18-49; Column 6, Lines 7-44):

- connecting to a (corporate) network (Intranet, Internet, WAN, LAN, etc.) a server (computer, terminal, workstation, etc.) having predetermined user software (code, program, module, etc.; Column 3, Lines 1-51; Figure 1);

- connecting to a (corporate) network (Intranet, Internet, WAN, LAN, etc.) a user terminal (computer, terminal, workstation, etc.) software (code, program, module, etc. Column 3, Lines 1-51; Figure 1);

- wherein the user software (module, component, subsystem, program, client, workstation, etc.):

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- is auto-executed (launched, started, invoked, etc.) while the operating system is loaded (interview after startup/logon, auto-executed; Column 4, Second Scenario Steps 1-7);

- upon the detection of the network connection updates/sends the following information/data: a (warning) statement (message) that the user terminal is connected (initial logon and set up; Column 4, Step 2); checks for pending questions (surveys, polls, questionnaires, etc.; interview at startup, Column 4, Second Scenario, Step 4); enters (inputs, saves, stores, asks, etc.) new questions with (required) schedules (timing, order, etc.; Column 5, Lines 18-49; Column 6, Lines 7-44).

Parrish et al. does not expressly teach running the user/client software in background, maintaining the communication in an active state or that the system (administrator) identifies a connected user in a waiting state as claimed.

Official notice is taken that automatically launching programs at system startup/boot up and subsequently running those systems in the background (e.g. system tray) wherein the background programs/processes perform any number of a plurality of tasks (e.g. printer pooling, internet/network connectivity, virus protection, etc.) is old and very well known.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for generating an evaluation communication as taught by

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Parrish et al. would have benefited from launching at startup and running the client program/subsystem in the background in view of the teachings of official notice.

Official notice is taken that maintaining communications between two or more systems/subsystems (programs, codes, servers, clients, etc.) wherein the systems/subsystems progress through a plurality of states, such as active, suspended, waiting, pending or the like, which are monitored as part of the communication process is old and well known.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for generating an evaluation communication as taught by Parrish et al. would have benefited from utilizing a plurality of well known network communication protocols/techniques/standards in order to maintain the connection/communication link between the client and server in view of the teachings of official notice.

Regarding Claim 2 Parrish et al. does not expressly teach that the network is the intranet of a Bank as claimed; however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. Furthermore that the network is a Bank intranet network merely represents an intended filed of use.

The recited method steps would be performed the same regardless of the specific network (Internet, intranet, extranet, WAN, LAN, etc.) over which the evaluation communication is established or the intended field of use of the evaluation communication. Further, the structural elements remain the same regardless of the specific network over which the evaluation communication is established. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Regarding Claim 3 Parrish et al. teach a method for generating/establishing a evaluation communication wherein the evaluation communication can be carried out for a specific user, for a group of users or for a list of users (staff, personnel, workers, resources, workforce, etc.) and further comprising issuing (displaying, providing, etc.) a (detailed) statistical report based on the user's responses (Column 1, Lines 30-46; Column 4, Lines 5-20; Figure 1).

Regarding Claim 5 Parrish et al. does not expressly teach using a *Windows* platform as claimed.

Official notice is taken that utilizing Microsoft Windows products (applications, operating systems, etc.) to communicate over TCP/IP networks is old and very well known.

It would have been obvious to one skilled in the art at the time of the invention that the network-based online system and method for establishing an evaluation communication as taught by Parrish et al. would have benefited from utilizing any of a plurality of “platforms” to communicate using well known TCP/IP protocols including but not limited to Microsoft Windows platforms in view of the teachings of official notice.

Further it is noted that while Parrish et al. is silent on the “platforms” used in the online system and method for establishing an evaluation communication, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific “platform” (e.g. operating system) used to support/enable the network communications. Further, the structural elements remain the same regardless of the specific “platform” used to support/enable the network communications. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Regarding Claim 6 Parrish et al. is silent on the tools (systems) used to develop/program the evaluation communication system and method, specifically Mishkin does not expressly teach that the ADMINISTRATOR software programs (code,

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routines, objects, etc.) were developed/programmed using Delphi 6.0 and MS-SQL data server 7.0 as claimed; however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific systems/tools/applications used to program the evaluation communication system. Further, the structural elements remain the same regardless of the specific systems/tools/applications used to program the evaluation communication system. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

13. Claims 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parrish et al., U.S. Patent Publication No. 5,416,694 as applied to claims 1-3 and 5-6 above and further in view of Mishkin, Paul B., U.S. Patent No. 6,377,781.

Regarding Claim 4 Parrish et al. teach a method for generating/establishing a evaluating communication further comprising generating/displaying a statistical report as discussed above.

Parrish et al. does not expressly teach calculating maximum point (score, rating, knowledge level, number correct/incorrect, etc.), minimum point, average or standard deviation as claimed.

Mishkin teaches a system and method for generating/establishing a evaluating communication, as discussed above, wherein the system/method generates and reports on a plurality of evaluation statistics (measures, metrics, values, etc.) including sorting by score (min/max), number of correct/incorrect, total score/points, average scores as well as statistical distributions (Column 5, Lines 46-53; Column 7, Lines 42-52; Figure 2, Elements 208, 210, 212, 214) in an analogous art of generating an evaluation communication for the purposes of automating the analysis of personnel evaluations (e.g. enabling teachers to conduct and grade/analyze quizzes over the Internet in an automated fashion; Column 1, Lines 20-36).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for establishing an evaluation communication as taught by the of Parrish et al., with its ability to collect, analyze and report on a plurality of evaluation results would have benefited from providing any of a plurality of well known and/or widely used statistics including but not limited to minimum, maximum and average scores/points as well as the statistical distributions of those results in view of the teachings of Mishkin; the resultant system/method enabling users (administrators, teachers, etc.) to automate the evaluation of users knowledge levels (Mishkin: Column 1, Lines 20-36).

While Mishkin teaches providing statistics regarding the statistical distribution of evaluation communication scores (points) neither Parrish et al. nor Mishkin expressly teach that one of the statistics is the standard deviation as claimed.

Official notice is taken that standard deviation is a common statistic used to describe statistical distributions and is commonly used to provide a measure of the range/distribution/variability of statistical distributions.

For example it is common for teachers to provide students with the highest (maximum), lowest (minimum), average test scores as well as the standard deviation of the test scores in order to assist students in understanding their ranking/position in the class (i.e. how well they did on the test) compared to the rest of the class.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for establishing an evaluation communication as taught by the combination of Parrish et al. and Mishkin, with its ability to collect, analyze and report on a plurality of evaluation statistics including but not limited to minimum, maximum and average scores as well as the statistical distribution of the scores, would have benefited from providing any of a plurality of well known and/or widely used statistics including but not limited to standard deviation in view of the teachings of official notice; the resultant system/method assisting users in understanding their ranking/position in the user group.

Further it is noted that the specific evaluation communication statistics claimed merely represent non-functional descriptive material, which are not functionally involved in the steps, recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Regarding Claim 7 Parrish et al. teach a method and system for generating/establishing a evaluating communication further comprising storing a

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plurality of user data (skills, training plans, etc.) in one or more databases (Column 3, Lines 54-68; Column 4, Lines 1-60; Figure 1).

Parrish et al. is silent on the specific user data stored and subsequently does not expressly teach that the user data includes user file number, name, security level or password as claimed.

Mishkin teaches a method for generating/establishing a evaluating communication further comprising storing the following user data: user file number (unique identifier), name, security level and password (Column 5, Lines 53-60; Column 6, Lines 41-46; Column 7, Lines 7-21; Figure 2, Element 216; Figure 5) in an analogous art of generating/establishing an evaluation communication for the purposes of enabling users conduct multiple and independent personnel/user evaluations (e.g. enabling only a selected number of users take a quiz during a particular session or enabling multiple teachers to conduct different quizzes without intermixing the results; Column 5, Lines 30-45).

It would have been obvious to one skilled in the art at the time of the invention that the evaluation communication system and method as taught by Parrish et al., with its ability to store a plurality of user and evaluation data in databases would have benefited from specifically storing user data including user file number, name, security level and password in view of the teachings of Mishkin; the resultant system/method

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enabling users conduct multiple and independent personnel/user evaluations sessions
(Mishkin: Column 5, Lines 30-45).

Further it is noted that the user data merely represents non-functional descriptive material, which is not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific user data stored in the database. Further, the structural elements remain the same regardless of the specific user data stored in the database. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

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14. Claims 9 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mishkin, Paul B., U.S. Patent No. 6,377,781 as applied to claims 8 and 10 above.

Regarding Claim 9 Mishkin does not expressly teach that the network is the intranet of a Bank as claimed; however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. Furthermore that the network is a Bank network merely represents an intended field of use.

The recited method steps would be performed the same regardless of the specific type of network over which the evaluation communication is established or the intended field of use of the evaluation communication. Further, the structural elements remain the same regardless of the specific type of network over which the evaluation communication is established. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Regarding Claim 11 Mishkin teaches a system and method for generating/establishing an evaluation communication, as discussed above, wherein the system/method generates and reports on a plurality of evaluation statistics (measures, metrics, values, etc.) including sorting by score (min/max), number of correct/incorrect, total score/points, average scores as well as the statistical distribution of the evaluation

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results (Column 5, Lines 46-53; Column 7, Lines 42-52; Figure 2, Elements 208, 210, 212, 214).

While Mishkin teaches providing statistics regarding the statistical distribution of evaluation communication scores (points) Mishkin does not expressly teach that one of the statistics is the standard deviation as claimed.

Official notice is taken that standard deviation is a common statistic used to describe statistical distributions and is commonly used in the providing users with a measure of the range/distribution/variability of the evaluation points/scores generating a plurality of evaluation (tests, exams, quizzes, etc.).

For example it is common for teachers to provide students with the highest (maximum), lowest (minimum) and average test scores as well as the standard deviation of a test in order to help students understand their ranking/position in the class (i.e. how well they did on the test) compared to the rest of the class.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for establishing an evaluation communication as taught by Mishkin, with its ability to collect, analyze and report on a plurality of evaluation statistics including but not limited to minimum, maximum and average scores as well as the statistical distribution of the scores, would have benefited from providing any of a plurality of well known and/or widely used statistics including but not limited to the

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standard deviation of the evaluation results in view of the teachings of official notice; the resultant system/method assisting users to understand their ranking/position in the user group.

Further it is noted that the specific evaluation communication statistics claimed merely represent non-functional descriptive material, which are not functionally involved in the steps, recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Regarding Claim 12 Mishkin teaches a method for generating/establishing a evaluating communication wherein the system (corporate server, terminal, workstation, computer, etc.) further comprises an ADMINISTRATOR software (code, program, routine, central server, etc.) and a database for registering (saving, storing, etc.) query results and user (client) data over the computer network (LAN, WAN, Intranet, Internet, TCP/IP, etc.; Column 6, Lines 7-47; Figures 1, 3A-3B)

Mishkin does not expressly teach using a Windows platform as claimed.

Official notice is taken that utilizing Microsoft Windows products to communicate over networks is old and very well known.

It would have been obvious to one skilled in the art at the time of the invention that the network-based online system and method for establishing an evaluation communication as taught by Mishkin would have benefited from utilizing any of a plurality of “platforms” to communicate using well known TCP/IP protocols including but not limited to Microsoft Windows platforms in view of the teachings of official notice.

Further it is noted that while Mishkin is silent on the “platforms” used in the online system and method for establishing an evaluation communication, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific “platform” (e.g. operating system) used to support/enable the network communications. Further, the structural elements remain the same regardless of the specific “platform” used to support/enable the network communications. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Regarding Claims 13 Mishkin is silent on the tools (systems) used to develop/program the evaluation communication system and method, specifically Mishkin does not expressly teach that the ADMINISTRATOR software programs (code, routines, objects, etc.) were developed/programmed using Delphi 6.0 and MS-SQL data server 7.0 as claimed; however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific systems/tools/applications used to program the evaluation communication system. Further, the structural elements remain the same regardless of the specific systems/tools/applications used to program the evaluation communication system. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Regarding Claim 14 Mishkin teaches a method for generating/establishing a evaluating communication further comprising storing the following user data: user file number (unique identifier), name, security level and password (Column 5, Lines 53-60; Column 6, Lines 41-46; Column 7, Lines 7-21; Figure 2, Element 216; Figure 5).

Further it is noted that the user data merely represents non-functional descriptive material, which is not functionally involved in the steps recited nor do they alter the

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recited structural elements. The recited method steps would be performed the same regardless of the specific user data stored in the database. Further, the structural elements remain the same regardless of the specific user data stored in the database. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Slade et al., U.S. Patent No. 4,671,772, teach a system and method for generating/establishing an evaluation communication wherein the system/method sends and analyzes survey/questionnaire/response sent to users in order to evaluate the knowledge/performance level of another (peer, co-worker, etc.).

- Hitchcock et al., U.S. Patent No. 5,823,781, teach a system and method for evaluating the level of knowledge/skill (skill diagnosis/assessment) of personnel in order to develop individual training plans/strategies as well as determine the effectiveness of training. Hitchcock et al. further teaches that the evaluation system and method analyzes user responses to questions and calculates and report several statistics including minimum/low point/rating (low proficiency level), total score and the number of correct/incorrect answers.

- Peters et al., U.S. Patent No. 5,893,098, teach a network-based evaluation (survey, polling, questionnaire) system and method comprising question and response databases, scheduled surveys (e.g. weekly), and survey results analysis and reporting.

- Hollingsworth, Gerald, U.S. Patent No. 6,157,808, teaches an evaluation system and method comprising skill assessments (questionnaires, surveys, questions), scheduled evaluations, TCP/IP network, Windows platform, SQL and user registration for the purposes of evaluating the knowledge level of corporate personnel, identifying training requirements and performing job analysis.

- Mintz, Alex, U.S. Patent No. 6,250,930, teaches a network-based evaluation (feedback, opinion) system and method wherein questions are sent to one or more users and user responses are received and analyzed.

- L'Allier et al., U.S. Patent No. 6,606,480, teach an evaluation communication system and method wherein the system identifies, via automated sending and analysis of questions/surveys, personnel knowledge/skills gaps in order to develop/generate a training plan.

- Walker et al., U.S. Patent No. 6,616,458, teach a network based system and method for conducting surveys comprising sending questions to a plurality of users, receiving and analyzing responses (e.g. average and majority responses, etc.), secure access (logon) and providing a list of pending surveys/questions to users.

- Lacy et al. U.S. Patent No. 6,735,570, teach a system and method for assessing/evaluation the personnel skill/knowledge levels wherein it is old and well known that such information is used for determining promotions, compensation awards/incentives and/or training programs. Lacy et al. further teaches that several skills assessment tools are commercially available.

- Womble et al., U.S. Patent No. 6,988,239, teach a system and method for evaluating the knowledge/skill level of personnel over a corporate network wherein the skill/knowledge assessment is used to identify personnel needing training.

- Gilbert et al., U.S. Patent Publication No. 2001/0011280, teach an online system and method for providing computer based-training including online skill assessments, which evaluate personnel knowledge/skill levels (proficiency).

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- Sketch, Edward Alun, U.S. Patent Publication No. 2002/0077884, teaches a an online system and method for evaluating personnel skill/knowledge levels and gaps for the purposes of identifying/developing training/learning solutions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott L. Jarrett whose telephone number is (571) 272-7033. The examiner can normally be reached on Monday-Friday, 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hafiz Tariq can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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